Title	Court Communication: Domestic Violence Protective Orders and Child Custody Orders (Cal. Rules of Court, rule 5.100)
Summary	The proposed rule would require courts to establish mechanisms to share information about protective orders issued in criminal cases and other orders involving child custody and visitation. (See Assem. Bill 160; Stats. 2001, ch. 698.)
Source	Criminal Law Advisory Committee; Family and Juvenile Law Advisory Committee
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Discussion	New Penal Code section 136.2(h)(3)(i) requires the Judicial Council of California to draft a protocol, for adoption by each local court, that includes "mechanisms for assuring appropriate communication and information sharing between criminal, family, and juvenile courts concerning orders and cases that involve the same parties, and …permit[ting] a family or juvenile court order to coexist with a criminal court protective order" subject to certain conditions. The statute also provides that a protective order issued in a criminal case takes precedence over an order issued in a civil case. (Pen. Code, § 136.2(h)(2).)

The proposed rule was developed in conjunction with a working group consisting of judicial officers and court managers. Preliminary public input was received at the annual Beyond the Bench conference in December 2001.

The proposed rule would require courts to adopt a local rule for information sharing regarding protective orders issued in specified criminal law cases, and child custody and visitation orders. Further, the proposed rule would outline the circumstances under which a child custody or visitation order could coexist with a protective order issued in a specified criminal law case.

The new statute did not provide funding for implementation. Therefore, the proposed rule would require courts to comply with its requirements using existing resources. Staff seeks comment on two issues in particular.

1. Narrow definition of "criminal court protective order"

The proposed rule defines "criminal court protective order" to include specified orders issued pursuant to California Penal Code section 136.2. Is this definition too narrow? Amended Penal Code section 136.2(h)(2) defines the same order as one issued in a case "in which a complaint, information, or indictment charg[es] a crime of domestic violence, as defined in Section 13700, has been issued."

The purpose of the proposed limitation is to exclude terms and conditions of probation that limit contact. Such terms are not reduced to writing on Judicial Council forms for entry into California's statewide protective order registry, and are therefore more difficult to trace and to share with other courts.

However, an argument can be made that all protective orders should be included if they were made pursuant to a complaint, information, or an indictment charging a crime of domestic violence as defined in section 13700. Even though probation terms are not entered into the statewide domestic violence restraining order registry, they are still protective orders and may conflict with child custody or visitation orders.

2. Narrow definition of "court"

The proposed rule defines "court" as all divisions within one county's local trial court jurisdiction. Amended Penal Code section 136.2(i) requires the Judicial Council to develop an information-sharing protocol "for adoption by each local court … ." The statute does not clearly indicate whether courts are required to share information throughout the state, within one county, or within one court. Is the proposed definition of "court" too narrow?

The proposal's drafters believe that it is unrealistic to require courts to coordinate proceedings and share information across county lines. Therefore, the protocol only requires courts within one county to share information.

Attachments

Rule 5.100 of the California Rules of Court would be adopted, effective January 1, 2003, to read:

1 **Rule 5.100 Court communication protocol for domestic violence and child**
2 **custody orders**
3
4 **(a) [Definitions]** For purposes of this rule,
5
6   (1) "Criminal court protective order" means any court order issued
7   under California Penal Code section 136.2 arising from a
8   complaint, information, or an indictment charging a crime of
9   domestic violence as defined in California Penal Code section
10   13700.
11
12   (2) "Court" means all divisions within one county's local trial court
13   jurisdiction.
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15   (3) "Cases involving child custody and visitation" include family,
16   juvenile, probate, and guardianship proceedings.
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19 **(b) [Purpose]**
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21   (1) This rule is intended to:
22
23   (A) Encourage courts to share information about the existence
24   and terms of criminal court protective orders and other orders
25   regarding child custody and visitation that involve the
26   defendant or victim named in the criminal court protective
27   orders.
28
29   (B) Encourage courts hearing cases involving child custody and
30   visitation to take every action practicable to ensure that they
31   are aware of the existence of any criminal court protective
32   orders involving the parties to the action currently before
33   them.
34
35   (C) Encourage criminal courts to take every action practicable to
36   ensure that they are aware of the existence of any child
37   custody or visitation court orders involving the defendant in
38   the action currently before them.
39

(D) Permit appropriate visitation between a criminal defendant and his or her children pursuant to civil court orders, but at the same time provide for the safety of the victim or witness by ensuring that a criminal court protective order is not violated.

(E) Protect the rights of all parties and enhance the ability of law enforcement to enforce orders.

(F) Encourage courts to establish regional communication systems with courts in neighboring counties regarding the existence of and terms of criminal court protective orders.

(2) This rule is not intended to change the procedures, provided in Family Code section 6380, for the electronic entry of domestic violence restraining orders into the Domestic Violence Restraining Order System.

(c) [Local rule required] Every superior court must, by January 1, 2004, adopt local rules of court that include:

(1) (*Court communication*) A procedure for communication among courts issuing criminal protective orders and courts issuing orders involving child custody and visitation orders, regarding the existence and terms of criminal protective orders and child custody and visitation orders.

(2) (*Modification*) A procedure to seek modification of criminal court protective orders to allow for contact between the person restrained in such orders and his or her children.

(3) The following requirements:

(A) Prior to issuing any order involving child custody or visitation the court must determine, to the extent possible, whether a criminal court protective order exists that involves any party to the action.

(B) Any court issuing orders involving child custody or visitation may grant orders for contact between the person restrained in a criminal court protective order and his or her children, subject to the following conditions:

1   (i)   The order must not contain language, either printed or

2   handwritten, that conflicts with a criminal court

3   protective order.

4

5   (ii) To provide for the safety of all parties and their children,

6   the order must specify the time, day, place, and manner

7   of transfer of the children, as provided in section 3100 of

8   the Family Code.

9

10   (C) When a court issues a criminal court protective order, the

11   court must advise the defendant and victim (if available) that

12   they may establish custody and visitation orders through the

13   family, juvenile, or probate court.

14

15 **(d)   [Inform law enforcement about local rule]** Courts must inform law

16   enforcement and other appropriate agencies (such as the district

17   attorney's or prosecutor's office, and public defender's or defense

18   attorney's office) of the existence of the rule required in (c), and provide

19   guidance and education on its meaning and implementation.

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1   AB160 excerpts
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3   Legislative Intent:
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5   SECTION 1. The Legislature recognizes that both criminal courts and civil courts
6   may issue protective orders or restraining orders to prevent domestic violence.
7   Orders issued by the criminal court also serve to protect the safety of a victim or a
8   witness in a criminal proceeding. In addition, a restrained person and the victim or
9   witness may have a child or children in common, and, if a court deems it
10   appropriate to grant visitation, civil protective or restraining orders may permit
11   contact between the parties for exchange of the child or children. In those cases, it
12   is the intent of the Legislature to (a) permit appropriate visitation between a
13   defendant and his or her children pursuant to civil court orders, but at the same
14   time provide for the safety of the victim or witness by ensuring that a "no contact"
15   order issued by the criminal court is not violated, and (b) request the Judicial
16   Council to establish a protocol for the timely coordination of multiple orders that
17   involve the same parties. The purpose of the protocol is to protect the rights of all
18   parties and enhance the ability of law enforcement to enforce orders.
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20
21   (Amended Penal Code section 136.2)
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23   (h)(2)In those cases in which a complaint, information, or indictment charging a
24   crime of domestic violence, as defined in Section 13700, has been issued, a
25   restraining order or protective order against the defendant issued by the criminal
26   court in that case has precedence in enforcement over any civil court order against
27   the defendant.
28   (3) Custody and visitation with respect to the defendant and his or her minor
29   children may be ordered by a family or juvenile court consistent with the protocol
30   established pursuant to subdivision (i).
31   (i) On or before January 1, 2003, the Judicial Council shall promulgate a protocol,
32   for adoption by each local court in substantially similar terms, to provide for the
33   timely coordination of all orders against the same defendant and in favor of the
34   same named victim or victims. The protocol shall include, but shall not be limited
35   to, mechanisms for assuring appropriate communication and information sharing
36   between criminal, family, and juvenile courts concerning orders and cases that
37   involve the same parties, and shall permit a family or juvenile court order to
38   coexist with a criminal court protective order subject to the following conditions:
39   (1) Any order that permits contact between the restrained person and his or her
40   children shall provide for the safe exchange of the children and shall not contain
41   language either printed or handwritten that violates a "no contact order" issued by
42   a criminal court.

1   (2) Safety of all parties shall be the courts' paramount concern.   The family or
2   juvenile court shall specify the time, day, place, and manner of transfer of the
3   child, as provided in Section 3100 of the Family Code.
4   (j) On or before January 1, 2003, the Judicial Council shall modify the criminal
5   and civil court protective order forms consistent with this section.